

STATE OF INDIANA )  
 ) SS:  
COUNTY OF ELKHART )

Superior  
IN THE ELKHART ~~CIRCUIT~~ COURT  
CAUSE NO. 20003-0604-MI-11

IN RE: MARKET DEVELOPMENT )  
SPECIALISTS, INC., )  
doing business as )  
WINTERGREEN SYSTEMS, )  
 )  
Respondent. )

AVC NO. 06-018

**FILED**

APR 28 2006

ASSURANCE OF VOLUNTARY COMPLIANCE

IN OPEN COURT  
CLERK ELKHART SUPERIOR COURT NO. 3

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, and the Respondent, Market Development Specialists, Inc., doing business as Wintergreen Systems, enter into an Assurance of Voluntary Compliance ("Assurance"), pursuant to Indiana Code § 24-5-0.5-7.

Any violation of the terms of this Assurance constitutes *prima facie* evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law, and upon consent of the parties.

The parties agree:

1. The Respondent is a for-profit domestic corporation located at 2510 Sterling Avenue, Elkhart, Indiana 46516 and transacts business with consumers under the assumed business name of Wintergreen Systems.

2. The terms of this Assurance apply to and are binding upon the Respondent, its employees, agents, representatives, successors, and assigns.

3. The Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter described, pursuant to the authority of Indiana Code § 4-6-9-4 and Ind. Code § 24-5-0.5-1, *et seq.*

4. The Respondent acknowledges it has been advised the Attorney General's role in this matter is to serve as counsel for the State of Indiana and the State of Indiana has not given the Respondent any legal advice regarding this matter. The Respondent expressly acknowledges the State of Indiana has previously advised the Respondent to secure legal counsel prior to entering into this Assurance for any legal advice the Respondent requires.

5. The Respondent, in soliciting and/or contracting with consumers, agrees to refrain from representing, either orally or in writing, the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the Respondent knows or should reasonably know it does not have.

6. The Respondent, in soliciting and/or contracting with consumers, agrees to refrain from representing, either orally or in writing, it is able to deliver or complete the subject of a consumer transaction within a specified of time, when it knows or reasonably should know it cannot.

7. The Respondent, in soliciting and/or contracting with consumers, agrees to fully comply with the Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*

8. For purposes of this Assurance, the term "rebate" shall mean the return of a payment in the form of cash, credit toward future purchases, merchandise, services, or any other consideration offered to consumers who purchase products or services from the Respondent, which is provided subsequent to the consumers' purchase.

9. The Respondent shall immediately abide by and incorporate the following terms and procedures into any future rebate program it chooses to offer to consumers.

- (a) The Respondent shall not require the submission of an original receipt as proof of purchase. For purposes of this provision, a receipt printed specifically for rebate submissions, i.e. a "rebate receipt" shall not be considered an original receipt. Furthermore, the Respondent may request a photocopy of an original receipt.
- (b) The Respondent shall give consumers a minimum of thirty (30) days from the original date of purchase to submit rebate forms and the required documentation to the Respondent;
- (c) Should the Respondent require a serial number or other unique product identifier to process the rebate, the Respondent shall place the serial number or unique product identifier in a prominent and easily accessible location. This may include, but is not limited to, the outer casing of the item, the box or packaging material, a separate document containing the serial number or unique product identifier created specifically for rebate submission, or contained in the user manual included with the product;

- (d) The Respondent shall establish procedures to ensure prompt delivery of rebates to consumers within the timeframe originally represented to the consumer. If no time period is specified by the Respondent, the Respondent shall issue the rebate within thirty (30) days of receiving a properly completed request.
- (e) Notwithstanding its representations to consumers, the Respondent agrees it shall deliver or complete the subject of a consumer transaction, including the delivery of a rebate, within eight (8) weeks upon receipt of a properly completed rebate request, unless the Respondent offers the consumer the option of either consenting to the delay, or for non-cash rebates, canceling the rebate request and promptly providing the consumer with reasonable cash compensation, or for cash rebates, providing the consumer with the option to receive merchandise or other products equivalent to or greater than the amount of the cash rebate originally offered;
- (f) The Respondent shall promptly process all timely submitted rebate forms for eligible purchases made by a consumer. Should a consumer be deemed "unqualified" for the rebate, the Respondent shall notify the consumer within eight (8) weeks and shall provide the consumer an explanation specifically describing the reason the consumer was deemed "unqualified" and include resubmission instructions. The consumer shall then be allowed an additional

thirty (30) days to resubmit a rebate request in compliance with the terms of the rebate offer.

- (g) The Respondent shall maintain a toll-free telephone number and/or website for rebate inquires by consumers on the terms of the rebate offer and to check the status of their rebates. The toll-free telephone number and/or website shall be made maintained throughout the rebate period. The rebate period shall begin with the commencement of the original rebate offer and continue until thirty (30) days after the expiration of the rebate offer.
- (h) In responding to consumer inquiries or corresponding with consumers, the Respondent shall not misrepresent, in any manner, expressly or by implication, any material terms of any rebate program, including the status of or reasons for any delay in providing any rebate.

10. Upon execution of this Assurance, the Respondent shall pay consumer restitution in the total amount of Three Hundred Dollars (\$300.00) to the Office of the Attorney General for distribution to the following consumers in the following amounts:

- (a) Richard Fink of Puyallup, Washington \$ 80.00;
- (b) David Monteleone of Butler, Pennsylvania \$ 80.00;
- (c) Sam Knecht of Wichita, Kansas \$ 40.00; and
- (d) Francis Honyotski of Georgetown, South Carolina \$100.00.

11. Upon execution of this Assurance, the Respondent shall pay costs in the amount of Five Hundred Dollars (\$500.00) to the Office of the Attorney General.

12. The Respondent shall not represent the Office of the Attorney General approves or endorses the Respondent's past or future business practices, or execution of this Assurance constitutes such approval or endorsement.

13. The Respondent shall fully cooperate with the Office of the Attorney General in the resolution of any future written complaints the Consumer Protection Division receives. This shall include, but is not limited to, the Respondent promptly resolving any additional valid consumer complaints brought to the Respondent's attention by the Office of the Attorney General either prior to, or after the filing of, this Assurance with the Court.

14. The Office of the Attorney General shall file this Assurance with the Circuit Court of Elkhart County. The Court's approval of this Assurance shall not act as a bar to any private right of action.

DATED this 27 day of April, 2006.

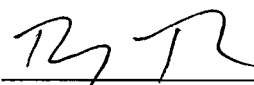
STATE OF INDIANA

RESPONDENT

STEVE CARTER  
Indiana Attorney General

  
MARKET DEVELOPMENT  
SPECIALISTS, INC.

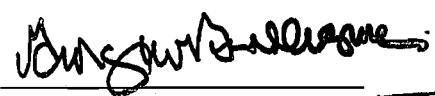
By:

  
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Indianapolis, Indiana 46204  
Telephone: (317) 233-3300

John Leung  
Printed Name

President  
Title

APPROVED this 28<sup>th</sup> day of April, 2006.

  
Judge, Elkhart Circuit Court III  
Superior

Distribution:

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John Levy, President  
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